In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1174

CARMINE SAGLIMBENE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner's principal claim here is that he was denied his right to a speedy trial.

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of conspiracy and one substantive count of a five-count indictment charging him and Patsy Piparo with the sale of a quantity of heroin, in violation of 21 U.S.C. (1964 ed.) 173 and 174.[1] On May 24, 1971, petitioner was sentenced to ten years' imprisonment on each count, the terms to run concurrently, and

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[1] Three of the substantive counts were dismissed with the government's consent on defendant's motion at the conclusion of the government's case. Piparo fled prior to trial and remains a fugitive.

fined $20,000 on each count. The court of appeals affirmed without opinion (*Saglimbene* v. *United States*, No. 71-847, Pet. App. A). On June 26, 1972, this Court vacated the judgment and remanded the case to the court of appeals (408 U.S. 916) for further consideration in light of *Barker* v. *Wingo*, 407 U.S. 514. On remand the court of appeals affirmed (Pet. App. 1a-5a), 471 F. 2d 16.

Petitioner claims that his constitutional right to speedy trial was violated because of the lapse of six years between indictment and trial. The particular facts in this case, upon which this contention is bottomed, were examined in the opinion of the court below, which carefully and correctly applied the controlling principles under *Barker* v. *Wingo*, 407 U.S. 514, in denying this claim. We rely on the opinion below in urging that the petition for a writ of certiorari be denied. Moreover there is no reason to defer action on the petition pending a decision in *Strunk* v. *United States*, No. 72-5521, certiorari granted, January 8, 1973. There the issue is whether a court may, under certain circumstances, reduce the length of defendant's sentence when the court finds that his right to a speedy trial has been violated, rather than dismiss the prosecution outright. As the court below pointed out, *Strunk* is inapposite because in the present case there was no violation of petitioner's right to a speedy trial. Since petitioner was not incarcerated prior to trial, there is likewise no basis for his claim that, here as in *Strunk*, the period of delay should be credited against the sentence imposed.

Petitioner's remaining contentions, which he incorporates by reference to his initial petition (No. 71-847),

are fully answered in the Memorandum in Opposition which was filed in response to that petition.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.

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[2] For the convenience of the Court, we are lodging ten additional copies of our initial Memorandum with the Clerk.